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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDIANARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1397 OF 2007

IN

SUIT NO. 502 OF 1988

Subodh Lallubhai Bhansali & Anr. ...Appellants

V/s.

Pandharinath Moreshwar Dahanukar & Anr. ...Respondents

And

Mrs.Neela Venulala Dhruv & Anr. .. Applicants

Mr.J.D.Bhatt for the plaintiff.
Ms.Varsha Palav for defendant nos. 1 to 5.

CORAM:- S.C.DHARMADHIKARI, J.

DATED:- 4TH SEPTEMBER, 2007.

P.C.

1. Heard Mr.Bhatt appearing for the plaintiffs and Ms. Palav appearing for defendant nos. 1 to 5.

2. By this Chamber Summons the plaintiff pray that the time to carry out the amendment be extended by condoning the delay of 6 years and 35 days in amending the plaint. The submission of Mr.Bhatt appearing in support of this Chamber Summons is that the plaintiffs were originally residing at Lamington Road, Mumbai.

However, the affidavit states on oath that the plaintiffs shifted their residence to Worli, Mumbai, in the year 1991. The plaintiffs were acquainted with Mr.K.R.Pandya, Advocate who had filed his Vakalatnama on their behalf. Mr.Bhatt states that he had filed the appearance jointly with Mr.Pandya as Junior Advocate and Mr.Pandya was in charge of the matters. Mr.Pandya failed to contact the plaintiffs. The plaintiffs have also stated that they failed to contact Mr.Pandya. It is true that the order passed by this Court is dated 4th July, 2001. There was a communication dated 24th July, 2001 by Mr.Bhatt to the plaintiffs, but the same was sent at the Lamington Road, Mumbai, address of the plaintiffs. It is, in these circumstances, that the communication could not be received. Now, the plaintiffs have been contacted and informed that the suit is ready for hearing. Therefore, the submission is that the delay be condoned in the interest of justice. It is submitted that the delay has been caused not due to any negligence or carelessness, but on account of the aforesaid circumstances and in the peculiar facts of this case, this court may exercise its inherent powers or those available under Section 148 of Civil Procedure Code and extend the time.

3. Ms.Palav appeared for defendant no. 1 submits that the delay is incapable of being condoned. The reasons for delay are not bonafide and genuine. She submits that when the Notice of Motion is taken out for

dismissal of suit in 2006, the same has been served at the address of the plaintiff at Lamington Road, Mumbai. Therefore, it is false to suggest that the parties are unaware of the Court proceeding or they have changed the address. Therefore, she submits that the the delay in amending the plaint cannot be condoned and the Chamber Summons be dismissed.

4. After perusing the Chamber Summons and the affidavit in support so also hearing parties, I am of the view that, the order granting amendment has been passed by this Court on 4th July, 2001, there is a delay of about 6 years and 35 days. This delay is capable of being condoned in as much as this Court has got inherited powers so also under Section 148 of Civil Procedure Code to extend time. That is not disputed either. The amendment is already allowed but it could not be carried out. Mr.Bhatt has made genuine efforts to contact the plaintiff and that is what the annexure to the affidavit in support is demonstrate. Therefore, all that remains is the fact that the plaintiff failed to get in touch with the advocates. In my view, the plaintiff have changed their residential address as contended in the affidavit and there is no denial of this fact. In the peculiar facts of this case, the delay deserves to be condoned but on payment of costs. Therefore, the following order would sub-serves the ends of justice.

:: O R D E R ::

. Upon the plaintiff paying costs quantified at Rs.15,000/- (Rs.Fifteen Thousand) to Defendant no. 1 to 5 within a period of two weeks from today and proof thereof being produced to the satisfaction of the registry, they are permitted to amend the plaint in terms of orders dated 4th July, 2001 within a period of one week from the date of payment of costs. If the costs are not tendered, needless to state that, the Chamber Summons shall stand dismissed, thereupon all consequences in law shall follow. Office to delete the name of Mr.K.R.Pandya as Advocate for plaintiffs, as he is no more.

(S.C.DHARMADHIKARI, J.)